

BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: TN Mental Health Consumers Assn.,)
)
Respondent.) No. 2008-0051
)
)
)

CONDITIONAL ASSESSMENT ORDER

This matter came on to be heard informally by the Commission on August 26, 2008, at its regularly scheduled meeting. Commission staff presented documentation indicating that Respondent failed to register as an employer of a lobbyist as required by Tenn. Code Ann. § 3-6-302(a)(1).

FINDINGS OF FACT

Documentation on file with the Commission shows, and the Commission finds, as follows:

1. Lobbyist Registration. On January 4, 2008, Mr. Anthony Fox registered with the Commission as a lobbyist. Mr. Fox listed TN Mental Health Consumers Assn. (Association) as his employer.
2. Employer Registration.
 - a. The Association was not registered as an employer as of February 14, 2008.
 - b. Commission staff sent an e-mail to the Association on February 14, 2008, noting that the TN Conference had not registered.
 - c. On May 1, 2008, Commission staff sent to Mr. Fox a notice that the TN Conference was not registered as an employer of a lobbyist.
3. Notice of intent to impose civil penalty.
 - a. On July 9, 2008, Commission staff sent to Mr. Fox, by certified mail, return receipt requested, a notice that the Commission would consider at its next meeting the question of assessing civil penalties against the Association for failure to register, and that the Association could choose to participate in an informal show cause proceeding if it chose to do so.
 - b. The notice set forth the allegations, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and the Association's opportunity to participate in an informal proceeding at the meeting either by

- appearing personally or by submitting a sworn statement and documents.
- c. According to the green certified mail return receipt card that was returned to the Commission, the Association received the notice on July 10, 2008.
 - d. On July 10, 2008, the Association registered as an employer of a lobbyist.
4. Show cause hearing.
- a. The Association was not represented at the hearing nor did the Association present a statement to the Commission explaining the failure to register.

CONCLUSIONS OF LAW

The Association employed Mr. Fox as an in-house lobbyist. Both the Association and Mr. Fox had a duty to register within seven days of the date in 2008 upon which the parties entered into an agreement or arrangement, or had an agreement or arrangement, for Mr. Fox to provide lobbying services for the Association. Tenn. Code Ann. § 3-6-302(a)(1). Op. Tenn. Ethics Comm'n, No. 06-01 (Dec. 12, 2006).

The Act authorizes the Commission to administratively assess a civil penalty of not more than twenty-five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750) if an employer of a lobbyist fails, without good cause, to timely register. Tenn. Code Ann. § 3-6-306 (a)(1)(A)(i). The Association did not show any good cause for the failure to register. Since the Association should have registered more than 30 days before it did, the Commission is authorized to impose a civil penalty of seven hundred fifty dollars (\$750) in this case.

The Commission has taken steps through training, website postings, and notices to help employers of lobbyists to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective.

The Commission further finds that there are no aggravating factors accompanying the failure to file. The Commission finds one mitigating factor. The Association filed promptly upon receipt of the show cause notice. Accordingly, the Commission finds that the Association should be assessed a civil penalty of four hundred fifty (\$450) dollars.

This assessment cannot be imposed or become final until after respondent has been afforded an opportunity for a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325. Tenn. Code Ann. § 3-6-107(8). The time within which that opportunity can be taken commences upon the date this order is issued.

CONDITIONAL ORDER

It is therefore ORDERED that a civil penalty in the amount of four hundred fifty dollars (\$450) be assessed against the Association for its failure to timely register as an employer of a lobbyist.

It is FURTHER ORDERED that the Executive Director shall issue this order and file it in

the Commission's offices.

It is FURTHER ORDERED that this order shall not become final if respondent files a timely request for reconsideration or petition for a contested case hearing

It is FURTHER ORDERED that the Executive Director shall cause to be provided to the respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, a copy of instructions on how to file a request to reconsider or a petition for a contested case hearing, and notice of the following:

Respondent's right to seek reconsideration of this order by filing with the Commission, within fourteen (14) days of this order, a written request for reconsideration in the form set forth in the notice;

Respondent's right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a petition for a contested case hearing in the form set forth in the notice; and

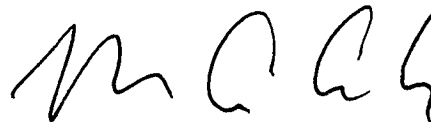
That in the event of failure to timely file a request for reconsideration or a petition for a contested case hearing the order shall become final and may form the basis for legal action to collect the civil penalty as a personal judgment against respondent.

SO ORDERED.

Issued this 4th day of September, 2008

TENNESSEE ETHICS COMMISSION

By: _____

A handwritten signature in black ink, appearing to read 'M A A H', is written over a horizontal line.

Bruce A. Androphy
Executive Director